
(1988) 11 OHC CK 0008
In the Orissa High Court
Case No : Civil Revision No. 794 of 1988

Padarbinda Bhuyan

APPELLANT

Vs

State Bank of india and Others

RESPONDENT

Date of Decision : 28-11-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 151

Citation : (1989) 67 CLT 470

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Mohapatra, J.—Plaintiff is the petition'r in this civil revision against an order refusing the prayer for temporary injunction during pendency of the suit.

2. Plaintiff is a clerk employed by the Defendant. He was posted at the main branch of the Defendant at Cuttack. After serving for some time, he was transferred to the branch of the Defendant in SCB Medical College. Aggrieved by the order of transfer Plaintiff filed the suit for prohibitory injunction not to give effect to the order Of transfer which is alleged to be in violation of the circular issued by the head office of the Defendant. In the suit an application for temporary injunction was filed. Defendant filed objection to the said application but did not produce some documents caned for and did not answer the interrogatories. Accordingly it was not allowed to contest the application. However, trial court which passed the order of status quo vacated the same. This civil revision has been filed against the said order.

3. Mr. M. N. Das, learned Counsel for the opposite parties, raised an objection to the maintainability of the civil revision on the ground that an appeal lies against the impugned order which could have been filed in the District. Court. Mr. J. Das, learned .counsel for the Petitioner, submitted that the application for temporary injunction was filed invoking the inherent power of the Court u/s 151, CPC and

not under Order 39. Rule 1. CPC and accordingly, no appeal lies against the order u/s 151. CPC . This question need not detain me further since without answering the preliminary objection of Mr. . Das, I considered the matter on merit.

4. Mr. J. Das. submitted that the trial court has not been able to appreciate the decisions of the Supreme Court, reported in Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, and Shanti Kumari v. Regional Deputy Director Health Services, Patna Division, Patna and Ors. AIR 1983 S.C. 1577, for which there is exercise of jurisdiction with material irregularity. As has been held in Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others, , while considering the application for temporary injunction, prima facie case and balance of convenience are to be considered. This Court has also held in the decision reported in Orissa State Commercial Transport Corporation Limited, represented by its Secretary v. Satyanarayan Singh and Anr. ILR 1973 Cut. 1059 that for granting temporary injunction, prima facie case, balance of convenience and irreparable injury are to be satisfied. In case any of the three ingredients is not satisfied, no injunction should be granted.

5. Whether the application is under Order 39. Rule 1, CPC or u/s 151 of Code of Civil Procedure, the three ingredients are required to be satisfied in a particular case while exercising inherent power it is to be considered if ends of justice demands exercise of such power his a well known principle that where there is specific provision In the statute the inherent power is not to be exercised. When Order 39. Rule I, CPC specifically provides for injunction, the wide inherent power is to be sparingly used. I am satisfied that inherent power ought not to be exercised unless the, Petitioner is able to show that such irreparable injury would be caused to him unless the Court Comes in aid that it can in no Circumstance be repaired.

6. The entire suit is based on a circular issued by the head office of the State Bank of India. If an officer subordinate his violated a circular issued by the bead office person aggrieved can approach the head office intimating that the benevolent circular issued by it, has been violated by its subordinate. Thus, the injury caused to the Plaintiff could have been repaired by approach to the head office which issued the circular. It is not that case that the head office had also been approached which did not pay any need to the grievance of the Petitioner.

7. Even if the head office had not been approached also gave a chance to Mr. Das to satisfy me that the Plaintiff Petitioner would suffer irreparable injury. Mr. Das submitted that seniority in a particular branch gives many benefits to an employee which the Petitioner would be deprived of if he is transferred. By way of illustration Mr. Das submitted that continuing in a place he bad developed the leadership to be elected as an office bearer of the association and accordingly such leadership is being frustrated and the benefits which he would have got as an employee of the Bank according to the seniority in the branch is also being

frustrated by transfer. Both the illustrations are not acceptable to give interim relief to the Petitioner. If a person has the potentiality of the leadership the same can be developed at any place. No rule has been brought to my notice that continuance for a lesser term would deprive a n employee of being elected as an office bearer of the association. Accordingly by transfer the said right to office is not taken away. This is also not a case in the suit itself.

8. Benefits on seniority as an employee in a particular branch can be restored to an employee in case the suit is decreed in his favour. If any benefit is lost during the pendency of the suit, Plaintiff-Petitioner is at liberty to make amendment to the plaint for grant of such relief which he would have normally got if he would have continued in the branch. Thus, I am not convinced that there is any irreparable injury to the Plaintiff so as not to give effect to the order of transfer at this stage which would be the main relief in the suit itself. However, the order of transfer would be subject to the result of the suit itself.

9. Mr. Das relied upon the decision reported in Gurdial Singh Fijji Vs. State of Punjab and Others, , to submit that arbitrariness in State action would always be deprecated by a Court and would be interfered with since that gives rise to inference of mala fide. I am sure the trial court will take into consideration the aforesaid decision while disposing of the suit. At the stage of granting interim relief, this decision would be of no assistance to Mr. Das since arbitrariness is not to be inferred without materials in support. Mr. Das hall relied upon a decision of" this Court reported, in Ladukishore Sethi Vs. D.P.I. Elementary and Adult Education and Others, , where it was held that when an order of transfer is the outcome of mala fide or oblique motive, it is to be interfered with. Whether an action is mala fide and is an outcome of oblique motive would be a question of fact to be decided in a particular case on materials to be produced and proved in accordance with law. Such inference .is not to be drawn at interlocutory stage where the injury is not irreparable. Mr. Das also relied upon a Division Bench decision of Madhya Pradesh High Court reported in K.D. Gunta v. The Union of India and Anr. 1984 L. I. C. 71", which is also to the same effect. For the reasons already stated above and in view of the decision of this Court, I am not satisfied that the inherent power is to be invoked.

10. In the result, there is no merit in this application which is accordingly dismissed. However, in order to maintain harmony between the employer and the employee, I am sure that the trial court shall take expeditious steps to, conclude the suit so that the parties get the finality early. No costs.